

1 that couldn't happen. But as questions would
2 arise and as conversation would occur, of course
3 you were not a robot. You had to then deviate
4 from the script using the objection handlings
5 page as your guidance.

6 But in reality, both would apply, of
7 course. You would have to use the script because
8 that's your introduction to the customer. And as
9 questions and then conversation was engaged, then
10 you apply what you just described, that natural
11 tone you would use.

12 Q. Now you testified a minute ago that
13 you don't really believe that a telemarketer has
14 achieved, for lack of a better word, a true
15 communication until they've reached the customer,
16 until they've repeated the name of the company or
17 any other relevant fact that the customer is
18 confused about until such time as the customer
19 has understood it?

20 A. I would hold them to that standard,
21 sure.

1 tell at a glance every sales rep's progress and
2 sales for the day and the week. So the answer is
3 clearly yes.

4 Q. So the telemarketers knew whether they
5 were doing good or not?

6 A. As a group, yes. Of course.

7 Q. You testified about the standard
8 telemarketer script. Is it fair to say that
9 telemarketers in the course of their
10 telemarketing activities found themselves to be
11 more successful by varying from the script so
12 that they can talk naturally themselves and not
13 read from the script? Is it fair to say that
14 telemarketers believe that they can achieve more
15 success if they can just talk themselves and say
16 what they want to say rather than read from a
17 script?

18 A. Both apply. The script is vital. And
19 we used our drilling and our training to simply
20 get their script to be in that natural
21 personality as you described. There's no reason

1 Q. In respect to question 9 in that
2 letter of inquiry, I just want to clarify
3 something that I didn't think fully came out in
4 response to a question that the FCC counsel had
5 asked. And that is, to paraphrase again, I
6 believe FCC counsel asked you: Is it possible
7 that a BOI telemarketing employee told a customer
8 to answer a third-party verifier yes or he or she
9 would lose their job.

10 And then a follow-up question from FCC
11 counsel was, could it have happened and gone
12 undetected. And I think your answer was no. But
13 I think the question that you were answering was,
14 could it have happened, been detected by a
15 manager or supervisor listening to an audiotape,
16 and then not reported. So just to put a finer
17 point on the question, could it have happened and
18 gone undetected?

19 A. I think it's impossible to listen to
20 every sales rep every minute, so then certainly
21 it could have potentially happened. And you're

1 correct, your assessment of my misduplication was
2 exact. If it came to me, it was handled.

3 Q. When you say misduplication, the
4 question you were answering in response to FCC
5 counsel's question is, did a telemarketer do it,
6 it was discovered by a supervisor or manager or
7 whoever was listening to the audiotapes, is there
8 a case where it wouldn't be reported if it was
9 detected?

10 A. That's right. I did answer that
11 question. And I still hold to that answer, that
12 would never have occurred. Could a rep have done
13 this without knowledge, it is possible.

14 Q. Could a rep have done it without it
15 being detected?

16 A. Without the knowledge of the managers
17 or the auditors or myself, that is possible.

18 Q. Question 10, did Peter Wolfe from the
19 FCC ever call you and say, Mr. Chill, I got your
20 response to questions 7 through 11 and you have
21 omitted question 10?

1 A. Counselor, no one alerted me to that,
2 and I'm sorry as heck that someone didn't bring
3 it to my attention that I missed a question.

4 Q. To your knowledge, did Peter Wolfe or
5 anyone else from the FCC ever call Shannon Dennie
6 and say --

7 A. Oh, I have no idea.

8 Q. Did Shannon Dennie ever tell you that?

9 A. Of course not. I would have plugged
10 that in right away. It's an embarrassing
11 oversight.

12 Q. So to your knowledge, when you
13 responded to questions 7 through 11 and question
14 10 was omitted, no one from the FCC ever called
15 and said, We need more information on question
16 10, you never answered it?

17 A. I would just like to modify how you
18 asked that. You said I answered questions 7
19 through 11 but omitted question 10. I did not
20 intentionally -- I did not omit it. I didn't
21 decide to not answer. It was a sheer oversight

1 that I failed to answer it.

2 Q. You're absolutely right. What I said
3 was omit.

4 A. Yes. I just failed to answer it and
5 this is the first I've seen it. I'm looking at
6 it and I'm wondering what happened. Like I said,
7 I checked to see if I missed 11 and just
8 misnumbered 10 and didn't get to the end. But
9 that wasn't the case. I don't know how I did
10 that.

11 Q. Did you ever receive a letter from the
12 FCC saying, We received your responses, Mr.
13 Chill, to those questions and we would like some
14 more information. And by the way, you forgot to
15 answer question 10?

16 A. Sir, of course not. I would have been
17 happy to comply.

18 Q. Do you know if Shannon Dennie ever
19 received such a letter?

20 A. If she did and didn't report it to me,
21 that's grievous. She would have to tell me. I'm

1 speaking -- although I don't know for sure. I
2 can't imagine however that she would have not
3 brought it to my attention. And frankly, I don't
4 know why she didn't check my work.

5 Q. But if she would have gotten a letter
6 from the FCC saying you didn't answer question
7 10, she would have said, Gene, why didn't you
8 answer this question?

9 A. Well, of course. And for a few months
10 after this happened, we were working even much
11 closer in proximity than we had been prior when I
12 was moved to Avatar.

13 Q. So as far as you know, you said in
14 this response -- well, rather, the company said
15 in this response, which included your responses
16 to questions 7, 8, 9, and 11 and the next time
17 you communicated with the FCC, the company
18 communicated with the FCC, that was directly on
19 points in the Show Cause Order?

20 A. I didn't even know I was mentioned in
21 this.

1 Q. I understand. You said in response to
2 -- the questions that you responded to in
3 response to the November 1st letter of inquiry
4 asked for supporting information and
5 documentation. It was -- if I could fairly
6 summarize your testimony -- you're saying that
7 you answered the core question but you thought
8 that supplementary documents and data would be
9 supplied by someone else?

10 A. I assumed that.

11 Q. So you were answering the core
12 question?

13 A. That is correct.

14 Q. Is anyone allowed to vary from the
15 standard telemarketing script other than to
16 respond to questions?

17 A. No one is allowed to vary from the
18 standard script except for in the case of exactly
19 what you said, which is when they get questions
20 and to handle those questions.

21 Q. There was some tension with Bill

1 Brzycki?

2 A. He wasn't effective. That's the only
3 way to put it.

4 Q. Have you talked to him since he left
5 the company?

6 A. Never.

7 MR. HARKRADER: Other than today?

8 A. Ran into him in the hall by accident,
9 barely recognized him.

10 Q. Do you have any sense of whether he's
11 a disgruntled employee or whether the terms of
12 his departure were amicable or not?

13 A. I think the terms of his departure
14 were amicable. It was done professionally. I
15 wrote up the severance agreement. I didn't
16 determine the points. I just drafted it on
17 behalf of my boss.

18 Q. But you came in and assumed his vice
19 presidential job and there was a seven or eight
20 month period that you were working together and
21 you were assuming a position that he was demoted

COURT REPORTERS, ETCetera, INC.

(202) 628-DEPO (410) 653-1115 1-800-947-DEPO (3376)

"We'll cover your job ANYWHERE in the country!"

1 from?

2 A. Correct. And there was naturally some
3 tension there but we were always civil.

4 Q. You said that he was not responsive to
5 a sexual harassment claim. Do you now have any
6 knowledge -- I know that corporate affairs wasn't
7 within the realm of your responsibility -- do you
8 have any knowledge of whether he was doing his
9 job in the regulatory arena, whether he was on
10 top of all his filing, whether he was caught up
11 on his work?

12 A. The bosses would copy me on various
13 dispatches. I don't know that it was so I would
14 actually do anything specifically. There weren't
15 actions that were expected of me. But because it
16 was a personnel matter, these dispatches -- these
17 were data that needed to go into his folder. And
18 so -- how do I say it? It was almost in passing
19 that I ended up learning of some of his
20 situations just because they came to my area.
21 And it was not my perception that he was a very

1 effective employee. He seemed to be very
2 ineffective. That was just the impression I was
3 given because of the documents I was seeing.

4 And I would even on occasion call him
5 in, Bill, what's up with this? And my impression
6 was of someone who just wasn't willing to just be
7 responsible.

8 Q. I'll wrap it up in two seconds here.
9 I just want to revisit the telemarketing issues
10 briefly. You drafted a letter, and I believe it
11 was in the early part of this year, or directive
12 or communication of some sort, directing
13 telemarketers to immediately discontinue,
14 politely discontinue their telemarketing pitch if
15 it becomes clear to them at any point during the
16 conversation that they're talking to somebody who
17 is not aware or confused or who doesn't have an
18 appreciation for the nature of the call.

19 A. It's a policy that I wrote which was
20 approved by the board called When to Stop the
21 Sale.

1 Q. When was that?

2 A. I don't recall, but I'm going to tell
3 you it was in the later few months of my
4 employment at Buzz, specifically at Buzz. So I'm
5 going to say early part of this year, later part
6 of 2002.

7 Q. Why did you write that?

8 A. Really addressing the very point that
9 you described when you started asking questions.
10 You mentioned listening to a person who simply
11 did not duplicate even though Business Options
12 was mentioned a few times. And I decided, after
13 hearing a few of these examples myself, some
14 people simply aren't bright possibly or whatever.

15 Q. Or old?

16 A. Well, that would be an alternative
17 case. Or if there was clearly someone who was
18 special needs of some kind. I simply did not
19 want our company pursuing these sales. If
20 someone was just too aged -- we have a very nice
21 product for senior citizens so this is a nice

1 market for us. We save them a lot of money with
2 our competitive prices. So we're inclined to
3 sell to senior citizens. But at some point a
4 telemarketer needs to duplicate, needs to realize
5 that this person simply isn't mentally present.
6 And that happens, and I didn't want those sales
7 pursued.

8 Q. Would you agree that even a customer
9 that might otherwise be confused, when they heard
10 the name telephone company, you're calling on
11 behalf of Business Options, a long distance
12 telephone company, do customers think of their
13 telephone company? Do they think of the
14 prominent telephone company? Do they think of
15 AT&T? Do they think of Bell South or Verizon and
16 Southwestern Bell?

17 A. I don't know if I can tell you that.

18 Q. Fair enough. But when they hear long
19 distance telephone company, they may say, You
20 mean AT&T? And a scrupulous telemarketer will
21 say, No, Business Options, and then would

1 repeatedly do so until the customer understands.
2 Or an unscrupulous one or even one looking to
3 make a sale and feeling they fulfilled their duty
4 could leave it at that. I already said I'm
5 calling on behalf of Business Options. I have no
6 further obligation to pursue until this customer
7 understands?

8 A. I'm not sure what your question is.

9 MR. HARKRADER: Was there a question
10 there?

11 MR. HAWA: The question was, does that
12 happen? The question was -- actually, let me
13 rephrase it and basically say the question --

14 MR. SHOOK: I think if you rephrase it
15 and put it in terms of whether he heard any tapes
16 or had reported to him that something like what
17 you're saying happened, and then whatever
18 question you have --

19 BY MR. HAWA:

20 Q. Have you heard any tapes or had other
21 reports where you have observed a telemarketer

1 identify themselves as Business Options but a
2 customer not fully understand it and then a
3 telemarketer not clarify? Or even if they do
4 clarify, not continue to clarify until the
5 customer understands?

6 A. Very difficult question to answer in a
7 yes or no way. Because ten calls will have
8 different gradient levels of understanding or
9 asking by the customer. It's expected -- my
10 answer would be, it's expected of the
11 telemarketer to represent their company
12 accurately. And I would -- as I have said -- put
13 the onus on that telemarketer to accomplish that
14 level of understanding. And after that, it would
15 be a judgment I would make if I felt that they
16 had done that. To some degree I'm holding the
17 customer also responsible who is listening. They
18 have a phone. They pay a phone bill. They have
19 some capacity to understand it. I drew a very
20 clear distinction that if it was clear that this
21 person did not have the capacity to understand

COURT REPORTERS, ETCetera, INC.

(202) 628-DEPO (410) 653-1115 1-800-947-DEPO (3376)

"We'll cover your job ANYWHERE in the country!"

1 because of their age or some kind of deficiency,
2 that we were not to sell to those people. That
3 was unscrupulous. Even the attempt to. Even if
4 you're getting the responses, yes. Do you know
5 what I mean?

6 MR. HAWA: Okay. Thank you, Mr.
7 Chill. I have no further questions.

8 Do you want a couple of minutes? Can
9 I have a couple of minutes?

10 MR. HARKRADER: Yes.

11 MR. HAWA: We'll go off the record.
12 Thank you.

13 EXAMINATION

14 BY MR. HARKRADER:

15 Q. Mr. Chill, I have a few other lines of
16 inquiry to follow up on. You wrote Mr. Brzycki's
17 severance?

18 A. Correct.

19 Q. At whose direction?

20 A. Kurtis.

21 Q. Did Kurtis review it?

1 A. Oh, yeah, I'm quite sure.

2 Q. Did Kurtis make any changes to it?

3 A. Probably.

4 Q. Did you have any other role in Mr.
5 Brzycki's severance other than drafting it?

6 A. Really not.

7 Q. Did you have any role or did you not
8 have any role?

9 A. There was no other role. I typed it.
10 I don't even know that I contributed to the
11 severance itself. I remember a discussion or two
12 about it, a brief discussion in the nature of,
13 What do you think? I wasn't part of that, but
14 I'm almost positive I'm the one who typed it up.

15 Q. Kurtis did make some changes to it?

16 A. Possibly.

17 Q. But you don't know?

18 A. I don't know, yes.

19 Q. But you certainly didn't make those
20 changes?

21 A. Oh, no.

1 Q. Did Mr. Brzycki know that you drafted
2 his severance agreement?

3 A. I believe he did.

4 Q. Did you tell him that?

5 A. I think so. I think he and I even
6 discussed it on one occasion. I made sure he
7 felt comfortable with it. It was done very
8 amicably. I seem to remember him in my office
9 one time. We were going over a point or two,
10 going over the logistics of it. We were going to
11 buy something for him, or how to do it with a
12 credit card. You know what I mean? Just the
13 nuts and bolts of it.

14 Q. So Mr. Brzycki was involved in the
15 drafting of his severance?

16 A. To some degree, yes, in that respect.
17 There was a bit of a negotiation as I understand.

18 Q. Between you and Mr. Brzycki?

19 A. No. No. Kurtis and Bill.

20 Q. So would you characterize that as
21 cooperative?

1 A. I felt that way.

2 Q. Particularly when he was in your
3 office discussing it?

4 A. My experience with him, yes. It was
5 always civil. It was professional. He and I
6 knew we had differences. I didn't hide that fact
7 from him. I didn't attend his going away party.
8 We weren't chums. I simply typed up, tried to
9 help create a fair, just crediting for the time
10 he spent with the company. And that was all I
11 knew about it.

12 Q. Did Mr. Brzycki seem to appreciate
13 your efforts in that regard?

14 A. I couldn't tell. I didn't get lots of
15 appreciation from Mr. Brzycki.

16 Q. You talked to Mr. Hawa earlier about
17 what you understood to be a lack of any follow-up
18 from the FCC with respect to yours and Ms.
19 Dennie's responses to the FCC inquiry letter.

20 A. Uh-huh.

21 Q. Do you know for a fact whether Ms.

1 Dennie or anyone else at BOI received any
2 follow-up from the FCC?

3 A. I don't know for a fact.

4 Q. So when you were saying earlier that
5 she would have told you about it, you were simply
6 speculating?

7 A. A pure presumption.

8 Q. You also spoke earlier about your
9 responses with Mr. Hawa and you said that you
10 were under the impression that others within
11 Business Options would supply data and documents
12 that would support BOI's response?

13 A. Correct.

14 Q. I understood from our conversation
15 that you had expected others to contribute
16 additional data particularly with respect to your
17 response to question 11.

18 A. I knew that corporate affairs -- this
19 was a corporate affairs matter. I probably just
20 assumed that that office would take care of
21 everything.

1 Q. What documentation did you assume that
2 anyone else in BOI would contribute to BOI's
3 response?

4 A. Whatever they needed. I didn't have
5 any specific focus on anything.

6 Q. Did that included any documentation
7 that would be responsive to questions 7 through
8 11?

9 A. Sure.

10 Q. Would you have terminated an employee
11 who expressly represented that they -- a BOI
12 telemarketing employee who expressly represented
13 that they represented AT&T to a customer?

14 A. Oh, immediately.

15 Q. And the same would be true if that
16 telemarketer expressly represented that they
17 represented any other telephone company besides
18 Buzz Telecom or Business Options?

19 A. The very mention of another phone
20 company in any context almost got you a
21 guaranteed termination. Just having said the

1 name. I felt even the use of another company's
2 name was covert and put in the mind of the
3 customer. You know what I mean? Such as, I'm
4 not from Sprint, but you've heard of Sprint. You
5 know, something like that. That would have meant
6 to me misrepresentation of magnitude. We were
7 very strict about that.

8 Q. So the mere mention by a Business
9 Options telemarketer?

10 A. Correct.

11 Q. As opposed to the customer.

12 A. Right. If a telemarketer just even --
13 even to repeat back the local carrier's name,
14 which is not a flagrant misrepresentation. But I
15 would say, Don't do that because even that can
16 put it in the mind of the customer. Anything
17 that even sounded -- you represent this company,
18 this is who you are, this is what you're selling,
19 it's a good product. We have a good product. If
20 anyone needs long distance, you'd have no trouble
21 just selling this. You don't need to associate

COURT REPORTERS, ETCetera, INC.

(202) 628-DEPO (410) 653-1115 1-800-947-DEPO (3376)

"We'll cover your job ANYWHERE in the country!"

1 yourself with anybody or anything else.

2 Q. Would you have terminated -- I assume
3 you would have terminated any such employee on
4 the spot?

5 A. On the spot.

6 Q. Regardless of any past transgressions?

7 A. If this was an employee of sterling
8 record up to that point, whose cousin was raped
9 the prior week or something -- you know what I
10 mean -- and could tell me something, tearfully
11 apologizing, I might have left it as a
12 suspension. But that's speculation because that
13 has never happened. My point is I would listen.
14 I would listen to what anybody had to say.

15 Q. Would you have terminated an employee
16 if, in your opinion, after listening to the tape
17 or reading a report, they failed to clarify a
18 customer's misunderstanding as to whom the BOI
19 representative actually represented?

20 A. That would be more a judgement call on
21 my part. It most certainly could result in a

COURT REPORTERS, ETCetera, INC.

(202) 628-DEPO (410) 653-1115 1-800-947-DEPO (3376)

"We'll cover your job ANYWHERE in the country!"

1 termination, or a suspension certainly. And if I
2 felt that it was -- to try to get the motivation
3 of the sales rep. A sales rep is human too and
4 if they were getting thrown off and if there was
5 just some confusion on that part, and I felt that
6 they could have more assertively made that point
7 and failed to do so -- not as a means of
8 misrepresenting but just failed to control their
9 own conversation like they should have, that
10 might have been a probation, for example.

11 Q. Just to make sure that we're all
12 clear, my question went to -- or did not go to a
13 situation where the telemarketer expressly says,
14 I'm from AT&T or I'm from Ameritech. It's where
15 they fail to clarify a customer's statement, such
16 like Mr. Hawa was saying, where a customer would
17 say, Do you mean Bell South?

18 A. Well, no. In that case, it's
19 termination. That's pretty clear. The way
20 you're asking that question, that's fairly clear.
21 To represent yourself as -- to align yourself

1 with, try to impress upon the customer that
2 you're with -- you know what I'm saying? You
3 don't have to come out and say it.

4 It's pretty obvious when someone is
5 trying to represent an association with these
6 companies. That's a terminable offense. The
7 failure to clarify Business Options, independent
8 of any other company -- no other company even
9 comes up -- that's where I would try to apply
10 some gradient judgment. Why they failed, how
11 they failed to clarify, why they failed to
12 clearly get across Business Options' name. If
13 they did not represent themselves as Business
14 Options, and they omitted that, that's
15 terminable. That's an easy call.

16 Q. But I believe -- you may have answered
17 this but I just want to be sure we're clear on
18 this. If you had a Business Options telemarketer
19 that called up a customer and a customer didn't
20 understand who the Business Options rep was
21 representing, and the customer then said, Do you

1 mean to say you're from Ameritech, and the
2 Business Options telemarketer did not clarify
3 that.

4 A. That's an easy call.

5 Q. Pardon me?

6 A. That's a very easy call.

7 Q. Termination?

8 A. Oh, yeah.

9 Q. Okay.

10 A. I would in that case have to hear my
11 telemarketer say, No, I'm not from that place. I
12 would have to hear that no as an affirmative and
13 definitive response to that question. Otherwise,
14 I would consider there to be misrepresentation
15 there.

16 Q. And that's a judgment call on your
17 part, right?

18 A. Well, those are easy. When I say
19 judgment calls, I'm talking about where there's
20 some thought involved. That's an easy call. It
21 is my judgment, but that's an easy call.